



SPONSOR: Sen. Henry & Rep. J. Johnson & Rep. Potter
Reps. Baumbach, Bolden, Heffernan, Jaques, Keeley

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 81

AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO CHILD SUPPORT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 513, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 513. Judgment; order of support; other terms.

(j)(1) For purposes of this section:

a. "Incarcerated" means being ordered by a court of this State to be confined by the Department of Correction or the Department of Services for Children, Youth and Their Families, or being ordered by a court of another state or of the United States to be confined by a similar entity.

b. "Involuntarily committed" means to be ordered by a court of this State to be admitted to or confined by a designated psychiatric treatment facility, as "designated psychiatric treatment facilities" is defined under § 5001 of Title 16, or being ordered by a court of another state or of the United States to be admitted to or confined by a similar entity.

c. "Suspended" means to set to \$ 0 the payment due on an order of child support or an arrears payment on an existing arrears balance or to set to 0 % the interest on arrears or past due child support.

(2) A court or administrative order requiring a parent to pay child support is suspended by operation of law for any period in which the defendant is incarcerated or involuntarily committed for 180 consecutive days or more unless any of the following apply:

a. The defendant has the means to pay support while incarcerated or involuntarily committed.

b. The defendant is incarcerated for an offense constituting domestic violence, under Chapter 7A of this title, against the custodial relative or the supported child.

c. The defendant is incarcerated for the defendant's failure to comply with an order to pay child support.

22 (3) A court or administrative order requiring a parent to pay child support resumes by operation of law on
23 the first day of the first full month after the defendant is no longer incarcerated or involuntarily committed.

24 (4) Notice of the modification must be sent to all parties.

25 (5) This section applies to defendants who are incarcerated or involuntarily committed on [the effective
26 date of this section] and defendants who are incarcerated or involuntarily committed thereafter.

27 (6) The Division of Child Support Services shall work with the Courts and Department of Correction to
28 develop processes and procedures to implement this section.

29 Section 2. The Division of Child Support Services shall conduct an evaluation of the effectiveness of the
30 suspension process authorized by this Act and shall report the results of the review and any recommended changes to the
31 General Assembly on or before November 1, 2021. The Division's evaluation must include a review of the ease of the
32 process for both the child support obligor and oblige, the total number of cases suspended, an analysis of the number of
33 cases suspended, and an evaluation of the obligors' adherence to child support orders following release from incarceration
34 or involuntary commitment.

35 Section 3. This Act expires on July 1, 2022, unless otherwise provided by a subsequent act of the General
36 Assembly.

SYNOPSIS

According to the National Conference of State Legislatures, on average, an incarcerated parent with a child support order has the potential to leave prison with nearly \$20,000 in child support debt, having entered the system with around half that amount owed. This national statistic is consistent with Delaware, where the average child support debt for those currently incarcerated in Delaware is \$10,000. Failing to recognize the inability to pay while incarcerated undermines the obligor's ability to make a successful transition and meet their obligations post-release, including the ability to pay child support. Delaware Family Court Rules will consider a term of incarceration that exceeds 1 year as evidence of a diminished earning capacity but the incarcerated parent needs to file a motion asking the Family Court for relief from the Child Support Order. The vast majority of incarcerated parents do not have independent income, resources, or assets with which to pay an obligation of child support consistent with their pre-incarceration circumstances.

This Act automatically suspends child support orders when a defendant is incarcerated or involuntarily committed for over 180 days unless the defendant has the means to pay support while incarcerated or involuntarily committed, the defendant is incarcerated for a crime of domestic violence against the custodial relative or the supported child, or is incarcerated for failure to comply with an order to pay child support.

Author: Senator Henry